

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7002

BILL NUMBER: HB 1280

NOTE PREPARED: Jan 24, 2006

BILL AMENDED: Jan 23, 2006

SUBJECT: Unsolicited Facsimile Advertisements.

FIRST AUTHOR: Rep. Murphy

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill provides that the transmission of an unsolicited facsimile advertisement is a deceptive act. The bill also authorizes the attorney general to recover civil penalties up to \$1,500 for the transmission of an unsolicited facsimile advertisement. This bill deposits the civil penalties in the Consumer Protection Division Telephone Solicitation Fund.

Effective Date: January 1, 2007.

Explanation of State Expenditures: The increase in administrative costs for the Attorney General from pursuing an action for violation of 47 U.S.C. 227 concerning telephone and fax solicitations should be offset by the civil penalties which the bill allows to be recovered.

Explanation of State Revenues: This bill could increase revenue to the Consumer Protection Division Telephone Solicitation Fund. The amount of the increase will ultimately depend upon the number of successful actions initiated by the Attorney General (AG) under the bill.

The bill provides that violating 47 U.S.C. 227 is a deceptive act. The AG may recover \$1,500 if a court finds that a person knowingly or intentionally violated 47 U.S.C. 227. The AG may recover \$500 if the violation was not intentional. The bill requires that any recovery by the AG be deposited in the Consumer Protection Division Telephone Solicitation Fund.

Court Fee Revenue: The bill also allows a person to initiate a civil action for violation of 47 U.S.C. 227. The recovery is limited to \$1,500 for willful deceptive violations and \$1,000 if the violation was not willful or

deceptive.

If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Background: 47 U.S.C. 227 provides that it is unlawful for any person within the United States

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice;

(I) to any emergency telephone line (including any "911" line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency);

(ii) to the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call;

(B) to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes or is exempted by rule or order by the Commission under paragraph (2)(B);

(C) to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine; or

(D) to use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Attorney General.

Local Agencies Affected:

Information Sources:

Fiscal Analyst: Adam Brown, 317-232-9854.